Secta. II-37—100,000—21-5-48.

Development (.95 48) Department.

ML SERIES.

G.O. No. 4153

Dated 10 8 48

[Despatch Abstract.]

Companies - Conversion of a company limited by guarantee without share capital into a company with share capital - Legal position Government of India letter - Communicated.

29 (1)-Tr.(C.L)/48
Government of India
Ministry of Commerce.

New Delhi, the 29th July 1948.

From

K. Srinivasan, Esquire, M.A.,
Under Secretary to the Government of India.

To

All Provincial Governments
& Chief Commissioners.

Subject:- Conversion of a company limited by guarantee, without a share capital into a company with share capital.

Sir,

I am directed to forward herewith a copy of the judgement of the Calcutta High Court relating to the above case, in which the Court held that that a company limited by guarantee without a share capital cannot alter its Memorandum of Association under section 12 of the Indian Companies Act so as to convert itself into a company with share capital. In this particular case, the ideal Mutual Insurance Co. Ltd., however converted itself into a share holders' company subsequently under a scheme of arrangement sanctioned by the Court and by re-registering itself under section 67 of the Indian Companies Act. A copy of a letter No. 484/48, dated 24th May 1948 from the company to the Superintendent of Insurance and its enclosures is also forwarded herewith.

2. It is requested that the legal position may be communicated to the Registrars of Joint Stock Companies. for their guidance.

Yours faithfully,

C. Srinivasan

Under Secretary to the
Government of India.

/True Copy/

Copy of letter from the Ideal Mutual Insurance Co. Ltd. Calcutta, to the Superintendent of Insurance, Simla, No. 494/48, dated the 24th May 1948.

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Subject:- Re-registration.

We have to inform you that our company has been re-registered under section 67 of the Indian Companies Act, 1913, x as Ideal Mutual Insurance Company Ltd. as a company limited by shares.

The Ministry of Commerce, Government of India conveyed their decision in their inability to approve of the proposed change of name of the company for which we duly applied to them with reference to your advice contained in your letter No. 745-I(2)/42 dated 20th December 1947. A true copy of the letter received from the Minister of Commerce, Government of India No. 29(1)-Tr.(C.L.)/48 dated 3rd May 1948 has been enclosed.

We threrefore request you to advice us whether we shall require a fresh certificate of registration from your office considering re-registration U/S 67 I.C. Act 1913, of the company has been completed under the same name. The certified copy of the certificate for re-registraion issued by the Registrar of Joint Stock Companies West Bengal is being forwarded to you herewith.

* * *

TRUE-COPY

Certificate of re-registration of companies
(Section 67 of Act VII of 1913)

- - -

No. 16719 of 1948-1949
213.

I hereby certify that the Ideal Mutual Insurance Company Limited which was xxx originally incorporated under the Indian Companies Act, VII of 1913, on the 22nd August 1940 as a company limited by guarantee without having a share capital has this day been re-registered under section 67 of the said Indian Companies Act as a Company limited by shares.

Given under my hand at Calcutta this 21st day of May One Thousand Nine Hundred and Forty Eight.

Sd/- Illegible,
Registrar of Joint Stock Companies
West Bengal.

SP/3.8. /True Copy/

Ture Copy/

Court fee.
Rs. 1/8/0

Court fee.
Rs. 10/-

IN THE HIGH COURT OF JUDICATURE AT FORTWILLIAM
IN BENGAL.

Ordinarily Original Civil Jurisdiction.

George VI, by the Grade of God of Great Britain Ireland and the British Dominion beyond the Seesking, Defender of the Faith.

The

The Hon'ble Mr. Justice Clough.

In the matter of the Indian Co.'s Act and

In the matter of the Ideal Mutual Insurance Co., Ltd.,

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Upon the application of the above named Ideal Mutual Insurance Co., Ltd., having its registered office upon ~~xxxxxxx xxx xxxxxxx~~ at No. P-15 Bentick Street in the town of Calcutta and upon reading the petition presented to this Court on the 15th Day of March last and the order made herein and dated the 15th day of March last and the report of Mr. M.L. Bose the Chairman (Seal) of the meeting of the Policyholders of the said company dated the 10th day of April instant filed on the 12th day of April and upon reading the order made herein dated the 15th day of March Last whereby the said company was directed to convence a meeting of its policyholders for the purpose of considering and if thought fit approving with or without medification a scheme of arrangement proposed to be made between the said company and its policyholders and upon hearing Mr. D.N. Sen Advocate for the said Applicant..

It is ordered that the scheme of arrangement as modified by the policyholders at their meeting held on the 5th day of April instant and as set forth in Annexure B to the said Petition (a copy whereof is set outin the schedule hereto be and the same is hereby sanctioned and this court doth hereby declare the same to the same to be binding on the policyholders of the company and on the said company. And it is further ordered that that the said company do file a certified copy of this order with the Registrar of Joint Stock Companies West Bengal with fifteen days from the same being filed. And it is further ordered that the said company do not out of its assets retain and pay the costs of an incidental to this application tobe taxed by the Taxing Officer of this Court as between attonrney and client.

Witness, Sir, Arthur Trever Harrics, Kt. Chief Justice at Fort William aforesaid the nineteenth day of April in the year of our Lord one thousand nine hundred and forty eight.

P.K. Bose,
22.4.48.

Schedule above referred to

1. Clause 5 of ~~xx~~ the existing Memoraddum of Association shall be deleted and in its place the following clause shall be substituted vi "The capital of the company is Rs. 5,00,000/- divided into 10000 share of Rs. 50/- each. The Memorandum and Articles of Association ~~xxxx~~. ~~Xxx M~~ shall accordingly be framed in accordance with the draft which has already been prepared.

2. Every policyholder of the Ideal Mutual Insurance Co., Ltd., shall in respect of each policy for Rs. 1000/- or any part of thereof be entitled to have claim from the reconstituted company five shares therein and the reconstituted company shall comply with every such claim but the reconstituted company shall not bound to allot any such shares unless the policyholder within four weeks from time when this scheme shall be sanctioned by the Hon'ble High Court by writing addressed to the reconstituted company claims the allotment of shares which he is entitled as aforesaid.

3. x x x x x

4. The company so reconstituted shall undertake to be liable to the present members of the company that is to say the Policy-holder whose policies are current for payment to them of the amount assured with the Ideal Mutual Insurance Co., Ltd. and the present members of the company shall accept such undertaking by the reconstituted company instead and place of and in full satisfaction and discharge of mutual guarantee of the members of the company, . The position of the present policyholders shall otherwise remain the same as at present and shall not be altered in any way i.e. to say the Terms and conditions contained in the policy Holders' contract shall otherwise remain unaltered.

5. The total number of the present policyholders whose policies are current is 870 and the total amount assured is Rs. 17,58.565 The Company reconstituted by the proposed share capital shall out of the premium collection set apart as and by way of a Reserve Fund a sum of Rs. 17.400/- to be utilised if necessary, for the purpose of meeting the undertaking of the present Policyholders under clause 5 of the existing Memorandum of Association to contribute to the assets of the company in the even of its being would up a payment of the debts and liabilities of the company and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories amongst themselves such amount for each Policyholder not excepting Rs. 20/- the aforesaid sum of Rs. 17.400/- shall be so set apart after the deposit as required under Section 7 of the Insurance Act shall have been made but before making any further investment, except granting loan on Policies Payments as required by the Insurance Act from time to time making advances to agents and others for development of business.

6. The reconstituted company shall not be liable to declare any dividends to the shareholders before payment of Bonus to the present Policyholders.

7. The clause 5 and 6 shall remain operative so long as the claims of the present policyholders are not paid up and or satisfied on maturity or otherwise.

8. Subject to the provisions of this Scheme the company reconstituted by share capital shall take over and discharge all the debts and liabilities of the Ideal Mutual Insurance Co., Ltd.,

9. The present Board of Directors of the Ideal Mutual Insurance Co., Ltd., shall be the first Board of Directors of the reconstituted company until the election of the New Board of Directors as hereinafter provided..

10. A general meeting ofthe shareholders of the Ideal Mutual Insurance Co., Ltd. as reconstituted as aforesaid shall be held within 3 months from the date of the sanction of the Scheme for the election of the Board of Directors of the reconstituted company and upon the formation of the Board of Directors thereof as aforesaid the present Board of Directors of the Ideal Mutual Insurance Co., Ltd. shall retire.

11. The Scheme be deemed to include any alterations imposed or sanctioned by the Hon'ble High Court.

p.t.o.

P.K. Bose.
Registrar
22-4-48.

I do hereby certify that this a true copy of the original in any custody dated this 23rd day of April 1948.

Sd/- Illegible.

for Registrar of the High Court
of Judicature of Fort William in
Bengal Original Jurisdiction.

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SP/4.8.

Suit No. of 19

IN THE ~~XWESTXTHE~~ HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Ordinary Original Civil Jurisdiction.

George VI, by the Grace of God, of Great British, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith.

Present:

The Hon'ble Mr. Justice Das.
February 18, 1948.

In the matter of the companies Act 1913.

In the matter of the Ideal Mutual Insurance Co., Ltd.,

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The Court:This is an application on the part of the Ideal Mutual Insurance Co., Ltd. for an order that the alteration of its memorandum proposed to be effected by certain special resolutions set forth in paragraphs 8 and 9 of the petition be confirmed by the Court.

The Company was in-corporated in the year 1940 as a company limited by guarantee and not having a share capital, The object of the company was to carry on the business of insurance on the lives of the members of the company for the purpose of carrying on the business of live insurance in all its branches and other objects set forth in the memorandum. The company applied for and has obtained sanction from the Controller of Capital Issues, New Delhi to the Company being converted into one with a capital of Rs. 5 lakhs divided into 10,000/- ordinary shares of Rs. 50 each. By a special resolution passed at an extra-ordinary general meeting of the company held on Wednesday the 19th November 1947 it was resolved as follows:-

> "Resolved that the memorandum of the company be modified by omitting the words business of insurance on the purpose of carrying on the business of life insurance in line 1, subclause (1) of clause 3 and substituting therefor the words" in India or in any other part of the world the business of life, fire, marine, accident guarantee, fidelity, motor car, vehicle general insurance and assurance.

There was a further resolution to the effect that clause 5 of the existing memorandum be altbgether deleted and that the followingclause be substituted in its place, namely: "capital of the company is Rs. 5 lakhs divided into 10.000 shares of Rs. 50 each. By a third special resolution the company resolved that the name of the company be changed from "Ideal Mutual Insurance Co. , Ltd. to "Ideal Life Insurance Co., Ltd. The application for confirmation of the above resolutions was made to me ex parte on the 1st December 1947 when I made an order as pprayed subject to the condition that the Sanction of the West Bengal Government be obtained to the change of the name of the company.

That order has not yet been drawn up. The Registrar of Joint Stock Companies however, has intervened and points out that one alteration mamely the alteration of clause 5 of the memorandum is not permissible by application under section 12 of the Indian Companies Act as has been sought to be done in this case. Under

p.t.o.

section 10 the company cannot alter the conditions contained in its memorandum except in the case and in the mode and to the extend for which express provision is made in this Act. Section 11 deals with the ~~chan~~ change in the name of the company. Then s. 12 deals with the alteration of the memorandum so as to change the place of registered office from one province to another and to change its objects in so far as the alteration seeks to convert the company which is a company limited by guarantee into a company limited by shares by deleting clause 5 and inserting in appear to me to come under s.12 of the Act. That the existing clause 5 is to be regarded as a condition of the memorandum appears to be clear from the provisions of section 7 of the Act. It is not for me on this application to express any opinion as to how the company can have clause 5 of its memorandum of association altered. It is enough for my present purposes to say that cannot be done on an application under section 12 of the Act. The result, therefore, is that I recall the order made by me on the 1st December 1947 and in its places make the following order namely, that the alterations of the Co Company's memorandum proposed to be affected by the special resolutions set forth in paragraphs 8 and 9 of the Petition except that relating to the alteration of clause 5 of the existing memorandum, be confirmed, subject, as to the alteration of the name, to the sanction of the control Government. I make no order as to the costs of this application. The previous order having been withdrawn, the requisition put in for completing that order may be utilised for completing the present order

S.R. Dass.

I do hereby certify that this is a true copy of the original in my custody. Dated this 17th day of June 1948.

Sd/- Illegible,
For Registrar of the High
Court of Judicature
at Fort William in Bengal. Original Juriddiction.

SP/4.8. /True Copy/

GOVERNMENT OF MADRAS

ABSTRACT

& COMPANIES - Conversion of a company limited by guarantee, without share capital into a company with share capital - Legal position - Government of India letter Communicated.

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DEVELOPMENT (K) DEPARTMENT

G.O. Ms. No. 4153 Dated 10-8-1948.

Read the following:

From the Government of India, Ministry of Commerce,
No. 29(1)-Tr. (C.L.)/48-dated 29-7-1948.

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O R D E R:

A copy of the letter from the Government of India, Ministry of Commerce, read above is communicated to the Registrar of Joint Stock Companies for information and guidance.

Sd/- x x x x x
17.8.1948.

To
The Registrar of Joint Stock Companies,
with India's letter and enclosures.
/True Copy/

SP/4.8.

for SUPERINTENDENT
Madras Record Office.